

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2013

Public Authority: London Fire Brigade
Address: 169 Union Street
London
SE1 0LL

Decision (including any steps ordered)

1. The complainant has requested a copy of a fire investigation report. The London Fire Brigade (LFB) disclosed this report, but withheld some of the content of it under the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that section 40(2) was applied correctly and so LFB is not required to disclose any further information.

Request and response

3. On 5 July 2012, the complainant wrote to LFB and requested information in the following terms:

"Please send me the fire investigation report(s) as to the fires on 31 March 2012 and 1 April 2012 at 13A Morpeth Mansions, Morpeth Terrace, London, SW1P 1ET."
4. LFB responded substantively on 2 August 2012. The report specified in the request was disclosed, but with part of the content of this redacted under the exemption provided by section 40(2) (personal information) of the FOIA.
5. The complainant responded on 3 August 2012 and requested an internal review in relation to the parts of the report that were withheld under section 40(2). LFB responded with the outcome of the internal review on 3 September 2012. The conclusion of the review was that the citing of section 40(2) was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 6 September 2012 to complain about the way his request for information had been handled. The complainant indicated at this stage that he was dissatisfied with the withholding of some information under section 40(2) and that he believed that the level of redaction meant that the report was rendered uninformative. The complainant also argued that the redactions were ineffective as he already knew the identity of the occupier of the property in which there was a fire.
7. In correspondence with LFB the complainant had specified that he was particularly interested in the redactions at the following paragraphs of the report:

3.20, 3.23, 3.24, 3.25, 6, 7, 11.1, 11.2, 11.6, 11.8 and 12.
8. It was confirmed with the complainant that the ICO investigation would concern whether the content withheld at those paragraphs had been withheld correctly under section 40(2). The analysis in this notice concerns only the redactions at the paragraph numbers specified above.

Reasons for decision

Section 40

9. LFB cited section 40(2) of the FOIA, which provides an exemption for information that is the personal data of an individual aside from the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process; first, the information must constitute the personal data of an individual aside from the requester. Secondly, the disclosure of this personal data must be in breach of at least one of the data protection principles.
10. Covering first whether the information constitutes the personal data of any individual aside from the complainant, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

"personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) *from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”.*

11. The view of the Commissioner is that all of the redactions in question here constitute the personal data of either the occupier of the address specified in the request, or of witnesses who contributed to the LFB report. In the case of the witnesses, these individuals are named in the report. Clearly, content identifying these individuals by name both identifies and relates to those individuals, so is personal data according to the definition given in the DPA.
12. The occupant of the property is also named in the report so, similarly, content that identifies that individual by name is clearly the personal data of that individual. Other content in relation to which LFB has cited section 40(2) does not name that individual. In relation to that content the complainant may argue that this does not constitute personal data as it does not identify the occupant of the property.
13. However, as shown above, section 1(1) of the DPA provides that information may be personal data if an individual can be identified from the information in question combined with other information. The view of the Commissioner is that the occupant of the property in question could be easily identified and linked to the report, even if the content that specifically names that individual were to be removed. This could be through, for example, existing knowledge held by the neighbours of this property, or through publicly available information such as the Electoral Register. On this basis the Commissioner finds that those redactions that do not specifically name the occupant of the property in question are nonetheless the personal data of that individual.
14. Turning to whether disclosure of this personal data would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle. The first principle requires that personal data be processed fairly and lawfully and the particular focus here is on whether disclosure would be, in general, fair to the data subject. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of the information in question.
15. Covering first consequences to the data subjects, the view of the Commissioner is that disclosure of the information would be likely to result in distress to those individuals. As covered below, the data subjects would be likely to regard the information in question as private and would reasonably expect that LFB would not disclose this

information. As a result, the conclusion on this point is that disclosure into the public domain of the information in question would be likely to cause distress to the data subjects.

16. Turning to the reasonable expectations of the data subjects, the view of the Commissioner is that it is likely that the data subjects would hold a strong expectation of privacy in relation to any information concerning this particular subject matter. The information records details of the home and lifestyle of the occupant of the property at which the fire occurred. This is information which most people would consider to be private and which they would not expect would be disclosed into the public domain.
17. As to the witnesses, the Commissioner believes that these individuals would have held an expectation that the information that they provided to LFB would have been used only for the purposes of the fire investigation and that this information would not have been disclosed more widely. Whether or not these witnesses were given a specific guarantee of confidentiality, the view of the Commissioner is that it is in the nature of providing information as a witness to a public body in connection with an investigation that the witness would hold an expectation that their contributions would only be disclosed for the purposes of that investigation and would otherwise remain confidential.
18. On the issue of whether there is any legitimate public interest in the provision of this information, the Commissioner recognises some limited public interest in understanding more about the investigation carried out by LFB into this fire. However, this public interest has already been partially satisfied through the disclosure to the complainant of that content within the report that was not redacted, which was the majority.
19. The complainant may argue that there is a more specific public interest in disclosure on the grounds that owners and occupiers of neighbouring properties have an interest in whether there is a risk of further fires at this location. This would not, however, be a valid public interest argument. The public interest concerns whether disclosure would be of benefit to all, whereas this argument concerns the private interests of a small subset of the public.
20. The complainant has argued that, as he is already aware of the identity of the occupier of the flat in question, as well as other residents, it would not be unfair to those individuals to disclose to him confirmation of what he already knows. Whilst in any event the redacted content goes beyond merely confirming the identities of the data subjects, the more important fact here is that disclosure under the FOIA is to the world at large. This notice does not, therefore, cover whether the information in question should be disclosed to the complainant; instead it covers

whether this information should be made publicly available. For this reason the existing knowledge of the complainant is not relevant to the question of whether disclosure would be fair.

21. The Commissioner has recognised some limited public interest in disclosure on the basis of improving public understanding of the investigation carried out by LFB. However, his view is also that it is likely that the data subjects would suffer distress through the disclosure of the information and that these individuals would hold a strong expectation of confidentiality in relation to the requested information, as well as that this public interest in disclosure has been partly satisfied through the disclosure of the majority of the information falling within the scope of the request. Given these factors, the Commissioner finds that this public interest is outweighed and that it would be unfair and in breach of the first data protection principle to disclose this information.
22. Overall the Commissioner has found that compliance with the request would involve the disclosure of personal data and that this disclosure would be in breach of one of the data protection principles. The conclusion here is, therefore, that the exemption provided by section 40(2) of the FOIA is engaged and so LFB is not required to disclose the redacted information.

Right of appeal

23. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF